United Nations A/AC.105/C.2/L.223

General Assembly

Distr.: Limited
22 January 2001

Original: English and French

Committee on the Peaceful Uses of Outer Space
Legal Subcommittee
Fortieth session
Vienna, 2-12 April 2001
Item 5 of the provisional agenda*
Information on the activities of international organizations relating to space law

Information on the activities of international organizations relating to space law

Note by the Secretariat**

In accordance with the agreement reached at the thirty-ninth session of the Legal Subcommittee (A/AC.105/738, para. 28), and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session,[1] the Secretariat invited international organizations to submit reports on their activities relating to space law for the information of the Subcommittee. The present document contains a compilation of the reports received by 19 January 2001.

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* A/AC.105/C.2/L.222.

** The present document contains replies received from international organizations by 19 January 2001. The replies are being reproduced in the form in which they were received and have not been formally edited.

[1] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 20* (A/55/20), para. 126.

V.01-80358 (E) 130201 140201

European Centre for Space Law

[Original: French]

(The report presented in 2000 includes the Centre's charter.)

The European Centre for Space Law (ECSL) continued its task of developing and promoting knowledge and study of space law in Europe. The year 2000 produced good results for the Centre and a number of its activities were successfully completed, including the following:

1. Manfred Lachs Space Law Moot Court Competition

Special mention should be made this year of the European team, which won the finals of the Manfred Lachs Space Law Moot Court Competition. ECSL had organized the European preliminaries. In this competition, run by the International Institute of Space Law (IISL), finalists from America, Europe and Australasia are judged by three members of the International Court of Justice.

This year's finals took place in Rio de Janeiro during the IISL annual conference and was presided over by Judge Gilbert Guillaume, President of the International Court of Justice.

The finals were won by the team from the University of Paris IX. Apart from offering continual assistance to the teams during their preparations, ECSL also assumed the travel and accommodation costs for the European finalists.

2. Summer course in space law and policy

ECSL organized its ninth summer course on space law and policy in collaboration with the Institute of Air and Space Law of the University of Cologne in Germany.

Once again, 40 students from a dozen European universities enjoyed two weeks of intensive courses on space law and applications. This year the focus was on legal aspects of the commercialization of the ISS and included the negotiation and drafting of a fictional operating contract. The students were highly motivated and some of them, after this introduction to space law, decided to continue in this direction and to write doctoral theses at their respective universities.

3. Practitioners' Forum

This event is aimed more at space law professionals (lawyers, corporate legal experts, etc.) and takes the form of an annual review of the latest developments in space law.

This year the meeting was devoted in its entirety to a presentation of the draft space protocol and the draft Unidroit convention, under consideration in the legal subcommittee. ESCL closely monitored the various meetings organized by Unidroit and was present, in particular, at the meeting held in Rome in October 2000.

This meeting gave practitioners an opportunity to gain a deeper insight into the stakes involved in and the problems raised by the draft protocol; the different

sectors concerned (banks, insurance, finance, industry, operators, etc.) presented their points of view. In organizing this comprehensive presentation of the draft, ESCL was hoping to establish a common position among the Member States.

1. Miscellaneous

ESCL worked at strengthening inter-university relations and encouraged the teaching of space law in Europe. An MA programme in air and space law was introduced this year at the University of Leiden (Netherlands), and a postgraduate programme in space and telecommunications law is currently being set up at the University of Paris IX.

ESCL has helped its national contact points to organize legal symposiums.

Finally, ESCL continues to publish the ESCL Newsletter, which has a wide international circulation.

European Space Agency

[Original: French]

The European Space Agency continues to attach considerable importance to the development and promotion of space law, be it through the conclusion of cooperation agreements or the adoption of legal measures. For this purpose (see report presented in 2000) the Council is assisted by a subsidiary body, the International Relations Committee (IRC), where questions relating to space law are discussed.

A particularly wide range of activities was scheduled for the year 2000, including the following:

1. Additional Declaration to the Convention on International Liability for Damage Caused by Space Objects

The Additional Declaration concerns the binding recognition (subject to reciprocity) of awards by the Claims Commission established under the Convention. It was adopted by the ESA Council on 21 June 2000 (text attached).

2. Space debris

This question was considered not only from a legal point of view but also at a technical level. ESA is a member of the Inter-Agency Space Debris Coordination Committee (IADC) and sits on the scientific and technical subcommittee of the plenary committee (the Third European Conference on Space Debris will take place at the European Space Operations Centre (ESOC) in Darmstadt, Germany, from 19 to 21 March 2001).

At the recommendation of the IRC, the ESA Council passed an important resolution on European policy with regard to space debris at its meeting in December 2000.

The Agency also helps coordinate the facilities available in Europe for monitoring space debris.

3. Other matters

The Agency has kept the IRC informed of the work of the International Institute for the Unification of Private Law (Unidroit) on its draft convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property. Mention should also be made of the report "The Ethics of Space Policy", published by UNESCO with the assistance of ESA in July 2000. The Agency is also presenting a working document on the concept of "launching State" for the corresponding working group of the subcommittee.

Finally, the Code of Conduct for astronauts at the International Space Station (ISS) has been approved, in particular by the Governments of ESA Member States participating in the ISS programme. The Station's operational phase, which is likely to raise a number of complex legal questions (liability for damage, intellectual property rights, litigation, etc.), is currently being considered.

International Institute of Space Law

[Original: English]

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL INSTITUTE OF SPACE LAW*

INTRODUCTION

The International Institute of Space Law (IISL) was founded by the International Astronautical Federation (IAF) in 1960 with the purpose of carrying out activities for fostering the development of space law and studies of legal and social science aspects of the exploration and use of outer space. The IISL presently has individual and institutional elected members from over 40 countries, who are distinguished for their contributions to space law development. As the IAF is an officially recognised observer at sessions of the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) and its Scientific & Technical and Legal Subcommittees, members of the IISL are entitled to be designated as IAF observers to those sessions.

RECENT ACTIVITIES

1. Participation in the UNISPACE III Conference

During the Third United Nations Global Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III), held in Vienna in July 1999, at the

* The draft of this report was prepared by a Member of the Board of Directors of the IISL, Dr. Ram Jakhu, and was approved by the President.

invitation of the United Nations, the IISL organised a four-day workshop from 20 to 24 July 1999. A report containing the recommendations of the Workshop were forwarded to the Intergovernmental Conference and the Conference, after consideration, adopted most of its recommendations which are now contained in the report adopted by the Conference, and endorsed by the United Nations General Assembly, which is to be found at http://www.un.or.at/OOSA.

2. The 43rd IISL Colloquium on the Law of Outer Space in Rio de Janeiro, Brazil

The 43rd Colloquium on the Law of Outer Space was organised from 2 to 6 October 2000 in Rio de Janeiro, Brazil. Of 55 accepted papers, 45 were presented at the following four sessions: (1) Law and Ethics of Space Activities in the New Millennium, (2) State Responsibility and Liability for Non-State Space Activities, (3) The Interrelation between Public International Law and Private International Law in the Regulation of Space Activities, and (4) Other Legal Matters, including Recent Developments in the Regulation of Space Debris, the Exploitation of Non-Terrestrial Resources, and the Implications of Proposed Missile Defence Systems. The IISL for the first time organised a Plenary Event, on the topic of "Making Space Profitable, Roles of Law and Policy". The speakers that made presentations at this event were from NASA, ESA, WorldSpace, Mansat, Space Policy Institute, and SpaceImaging. In the future, similar activity might remain on the Agenda for IISL in the form of a Plenary Event or an additional (fifth) IISL session, in order to discuss issues that would widen the reach of space law to engineers, scientists etc.

On a proposal by Prof. Fernandez Brital (Argentina), the IISL has established a new award to be known as "Dr. I.H.Ph. Diederiks-Verschoor Award". This award will be granted to the best paper presented at the IISL Colloquium by authors, under the age of 40 years, who submit papers for the first, second or third time, as a means to promote young lawyers. The award could be granted for the first time in Toulouse, France, in 2001.

3. The 9th Manfred Lachs Space Law Moot Court Competition

In 2000, a new round of this Competition for the Australasian region was held, in addition to the preliminaries in Europe and the USA. The National University of Singapore won that round and participated in the semi-final against the USA, which the latter won. The finals of the 9th Manfred Lachs Space Law Moot Court Competition (Homeria v. San Marcos) were held in Rio de Janeiro, Brazil, on 5 October 2000 at the First Court of Justice of Rio, between Hamline University (USA) as Applicant and the University of Paris XI (France) as Respondent. President Guillaume, Judge Rezek and Judge Vereshchetin of the International Court of Justice judged the finals, which were won by the University of Paris XI. The "Best Oralist" award was won by Allen Blair of the USA, and the new "Eilene M. Galloway Award for Best Brief", consisting of a certificate and a sum of money, was won by the Applicant from the University of Paris XI. A reception and dinner were hosted by the Local Organising Committee at the beautiful Palacio da Cidade. Around 130 guests attended, and Dr. Antonio Guerreiro, head of the Division of Special Themes at the Brazilian Ministry of External Relations gave a dinner speech.

The IISL wishes to expand the competition to Latin America and other regions and efforts will continue in that direction.

4. New Mission for the IISL

In the spirit of UNISPACE III requesting NGO's to take an active part in the work of the UN and on a proposal by Dr. Schrogl, the IISL has decided to play a more active role in formulating proposals and issuing position papers in order to make contribution to the further development of space law. A task force has been set up to work out the details of how to implement this decision.

5. Participation in the UNIDROIT Meetings

Several members of the IISL participated in the two recent meetings organised by UNIDROIT which dealt with the development of the Space Protocol to the proposed Convention on International Interests in Mobile Equipment. Main issues discussed were the definition of space property and remedies for default, how to seize control space property, and the role of COPUOS. The revised version of the Space Protocol will be discussed by COPUOS as a single issue item at its April 2001 meeting. The UNIDROIT Council will consider it at its September 2001 session and probably will authorize Government meetings for convening a diplomatic conference on the Space Protocol at the end of 2003. The IISL might include this item in briefing to the COPUOS Legal Subcommittee on current legal issues.

6. Co-operation with other organisations

Co-operation with other organisations has been continued, among others, with the United Nations COPUOS, the European Space Agency (ESA), the European Centre for Space Law (ECSL), the International Law Association (ILA), the International Bar Association, and several national institutions and universities. The IISL Standing Committee on the Status of International Agreements relating to Activities in Outer Space continued its useful work. The reports of this committee are published in the Proceedings of the IISL Colloquia on the Law of Outer Space. The IAF was represented at the Legal Subcommittee meeting of the UN Committee on the Peaceful Uses of Outer Space in Vienna, from 27 March to 7 April 2000, by Prof. E. Back Impallomeni, Dr. E. Fasan and Ms. R.M. Ramirez de Arellano y Haro. Prof. E. Back Impallomeni, Dr. S.E. Doyle and Mr. Yara Arvide served as official IAF observers at the Plenary COPUOS session in Vienna from 7 to 16 June 2000.

7. Award in Rio de Janeiro

In Rio de Janeiro, a Distinguished Service Award was given to Dr. Skip Smith (USA) for his continuing work in making the Manfred Lachs Space Law Moot Competition ever more successful since it was first held in 1992.

8. Publications

The Proceedings of the 42nd IISL Colloquium (Amsterdam, 1999) were published by the American Institute of Aeronautics and Astronautics (AIAA) in

July 2000. The first three volumes of the IISL Colloquium Proceedings were re-published some years ago with the help of the United Nations Office for Outer Space Affairs. "Space Law: A Bibliography", a cumulative index of the proceedings of the IISL Colloquia from 1958 until 1994, has been published in June 1996 as a co-operative effort between the IISL and the UN Office for Outer Space Affairs.

FUTURE ACTIVITIES

1. A Regional Space Law Conference in March 2001 in Singapore

A regional conference for the Asia Pacific region on the general theme of "Space Law Conference 2001: Legal Challenges and Commercial Opportunities for Asia" will be organised from 11-13 March 2001 in Singapore, in co-operation with the Society for International Law, Singapore (SILS). This is the first event in a series of regional meetings the IISL intends to organise. A variety of papers will be presented and discussed at the following five sessions: (1) Space Law and the Expanding Role of Private Enterprise, with Particular Attention for Launching Activities, (2) Safeguarding the Concept of Public Service in View of Increasing Commercialisation and Privatisation of Space Activities, with Particular Attention to the Global Public Interest & the Needs of Developing Countries, (3) The Legal Regulation of Remote Sensing in View of the Commercial Availability of Very High Quality Remote Sensing Imagery; the Need to Safeguard the Right to Privacy and the Principle of Non-discriminatory Access to Data, (4) The Development of Effective Mechanisms for the Settlement of Disputes Arising in Relation to Space Commercialisation, Taking into Account Existing Arbitration Rules Used in International Practice for Dispute Settlement, and (5) Legal Issues of Expanding Global Satellite Communications Services and Global Navigation Satellite Services, with Special Emphasis on the Development of Telecommunications and E-Commerce in Asia. In addition, there will be a keynote speech on "An Overview of the Major Legal Challenges Facing Space Activities in the 21st Century" by Dr. Nandasiri Jasentuliyana, (President, International Institute of Space Law, Former Director, UN Office of Outer Space Affairs), a luncheon speech on "The Possibility of Establishing an Asian Space Agency" by Prof. Doo Hwan Kim, (Honorary President, The Korean Association of Air and Space Law, Seoul, Korea) and another luncheon speech on "The ITU in the 21st Century" by Dr. Alfons Noll (Former Legal Adviser, International Telecommunication Union, Geneva, Switzerland).

The Singapore Conference hopes to assemble 150 participants from the Asia Pacific region and the rest of the world, and will also host the Australasian round of the Manfred Lachs Space Law Moot Court Competition.

2. The 44th Colloquium on the Law of Outer Space in October 2001 in Toulouse, France

The 44th Colloquium on the Law of Outer Space will be held in Toulouse, France, from 1 to 5 October 2001 on the general theme of "Emerging Legal Issues in Space Activities". There will be four sessions on the following topics: (1) Emerging issues of interpretation and application of space treaties (including definitional issues of state responsibility, launching states, space objects and related legal issues), (2) Emerging legal issues in satellite telecommunications (with special

attention for the national regulation of mobile satellite systems, including national licensing requirements, WTO agreements, ITU and GMPCS, private national entities operating on a global level, ownership of telecom service providers, principle of global (universal) telecom service, radio frequency management, need for an international independent telecom regulator, (3) Legal issues arising from the commercial availability of high quality remote sensing imagery (topics will include the extent to which such imagery can be admitted as evidence in civil and criminal cases; what legal requirements must be established to guarantee that such digital data used in legal proceedings are unaltered; the extent to which such data can be used to mediate international disputes; and what personal and corporate rights of privacy exist with regard to the acquisition and dissemination of such data), and (4) Other Legal Matters, including, the teaching of space law at the dawn of the new millennium, space debris, conflicts relating to space activities, legal aspects of human habitations in outer space, and emerging legal issues in the field of navigation by satellite.

3. The 10th Manfred Lachs Space Law Moot Court Competition in Toulouse, France

The semi-finals and finals of the 10th Manfred Lachs Space Law Moot Court Competition will be held during the 2001 Colloquium in Hôtel-Dieu St Jacques, in Toulouse, France, on The Case Concerning Access To ESI-1 Data, Soliscalor v. Cornucopia, written by F. von der Dunk. The preliminaries will be held in Europe, the USA and Australasia. The French Association for Air and Space Law (SFDAS) and the French Society for the Development of Space Law (ADDEF) will co-host an event for the IISL. The ESA, ECSL and ISU may also make special contributions.

4. COPUOS programme

The IISL has been requested again to organise a Symposium for the delegates and staff of the Legal Subcommittee of the COPUOS session in 2001 on the subject of "Dispute Settlement Mechanisms". Dr. E. Fasan will be the co-ordinator for this Symposium.

5. Publications

The Proceedings of the 43rd Colloquium on the Law of Outer Space (Rio) will be published by the AIAA.

The IISL will continue to prepare material for the United Nations annual review of developments in international co-operation and space law "Highlights in Space". The IISL contribution to "Highlights in Space" will be written by Dr. Doyle.

A new edition of the History of the International Institute of Space Law is being prepared by Dr Doyle and is expected to be completed soon.

International Law Association

Space Law Committee

[Original: English]

A. General Information

The Space Law Committee of the International Law Association has been reporting to the COPUOS every year on the progress of its work. Following our last presentation to the 39th Session of the Legal Subcommittee of COPUOS, held between 27 March-6 April 2000 in Vienna,[2] we are now pleased to report on further developments concerning the ILA Space Law Committee's task.

A more detailed source of information is contained in the ILA Conference Reports, published in book format shortly after each biennial Conference. These Conference Reports reflect the work carried out by the Space Law Committee, including reports, questionnaires to members and answers thereto, as well as a summary of the debates taking place at the Working Sessions of the Conference. In addition, the Reports carry the resolutions adopted at each Conference by the Plenary Session containing, inter alia, the terms of reference for the Committee's future work.

The Space Law Committee of the ILA is chaired by Professor Karl-Heinz Böckstiegel (German Branch), and Professor Maureen Williams (HQ Branch Argentina) is the Committee's Rapporteur. Its members are specialists of note, many of whom are well known to members of the COPUOS and its Legal Subcommittee, among which mention should be made of Prof. Vladimir Kopal, present chairman of the Legal Subcommittee of COPUOS, Dr. Nandasiri Jasentuliyana, former Director of the UN Outer Space Affairs Office, and Professors Sir Robert Jennings and Gilbert Guillaume, past and present presidents, respectively, of the International Court of Justice.

A long-standing tradition of our Committee is the interdisciplinary approach to our work. Thusfar we been assisted by Prof. Dr. Dietrich Rex (Germany), Prof. Lubos Perek (Czech Republic) and Prof. Eng. Humberto Ricciardi (Argentina). The latter, a well-known scientist within the United Nations Space Programme during the sixties, regrettably passed away on 23 September 2000 which is a great loss for the ILA Space Law Committee.

B. Topics On The Agenda Of The ILA Space Law Committee

The following topics are currently being considered by our Committee:

1. Review of the Space Law Treaties in View of Commercial Space Activities
2. Dispute Settlement related to Space Activities, and
3. Space Debris

[2] Doc. A/AC.105/C.2/2000/CRP.4, 22 March 2000.

Within the context of this Report attention will be focussed on the first of the subjects listed, given its closeness to one of the items presently on the agenda of the Legal Subcommittee entitled "Review of the status of the five international legal instruments governing outer space". Insofar as topics 2 and 3 are concerned, reference is hereby made to our presentation to the 43rd Session of COPUOS (7-16 June 2000, Vienna) where an extensive account of both these subjects –kept under permanent study by the ILA Space Law Committee- may be found. Therefore, only a short paragraph on each of these topics will be included at the end of the present report.

1. Review of the Space Treaties in View of Commercial Space Activities

As announced in our last report to COPUOS, written just under a year ago, the ILA Space Law Committee reported on the results of its studies on the subject of reference to the 69th Conference of the International Law Association held in London in July 2000.

Let us briefly recall the Committee's working methodology. Over the span of two years which elapsed between the mandate conferred by the ILA 68th Conference to pursue research in this direction, and our Final Report for the London ILA Conference, two drafts were circulated to Committee members and our scientific consultants.

The first stage following the 1998 ILA Conference consisted in the preparation of four Special Reports, aimed at establishing to what extent the major space treaties in force today should be amended as a consequence of the dramatic increase of commercial activities in outer space. This implied a re-examination of 1967 Space Treaty, the 1972 Liability Convention, the 1975 Registration Convention and the 1979 Moon Agreement.[3] These introductory reports were circulated at the end of 1998.

A number of comments and suggestions on these introductory reports were received from Committee members and other specialists. On this basis, the second stage of our task began with the drafting of a consolidated text by the Committee's General Rapporteur who, after a second round of comments, prepared a Final Report for submission to the London Conference in July 2000.

This Report also took into account proposals and conclusions stemming from other recent meetings on the subject, inter alia:

- the Workshop on Space Law for the Twenty-first Century, organised within the framework of Unispace III (1999).

- the 1999 IISL Amsterdam Colloquium.

[3] The ILA Space Law Committee decided that, for the time being, the 1968 Astronauts Agreement would not be revisited in view of its vague relationship with the commercial sides of space activities. However, some of the Committee members did not agree entirely with this course of action.

- the different Colloquia related to Project 2001 concerning the Legal Framework for the Commercial Use of Outer Space, conducted by the Institute of Air and Space Law of the University of Cologne, directed by the Chairman of the ILA Space Law Committee, Prof. Böckstiegel,

- the results of recent research projects conducted by the General Rapporteur of this Committee, Prof. Williams, in the field of Dispute Settlement and Commercial Space Activities (University of Buenos Aires),

- the conclusions of the Iberoamerican Institute of Air and Space Law at its XXIX Conference (Panamá, October 1999), and others related meetings.

We shall now refer to some of the major questions involved in the revision of the Space Law Treaties and conclusions underlying our work for the 69th ILA Conference.[4]

1.1 The 1967 Space Treaty

On general lines, this Treaty was considered flexible enough, in the present international scenario, to serve as basis for governing the activities of private entities in outer space. The Special Rapporteur on this topic, Prof. Stephan Hobe (German Branch), indicated that any possible improvements should focus on the clarification of a number of concepts, such as "outer space" (i.e., the problem of delimitation), "space object" and the definition, in more precise terms, of the scope and implications of the "common benefit" clause. Should we embark on any changes, it was also suggested that the provisions embodied in Article VI dealing with international responsibility should be clearer having in mind that this Article is closely related to a possible commitment of States to enact national laws concerning authorisation and supervision of the activities of private entitites in outer space.

Most Committee members agreed, however, that this Treaty on General Principles -as it is often referred to- should, for that very reason, remain untouched. Concern was expressed that, should amendments be introduced, its deeply-rooted principles would become affected. A majority believed that the most sensible course of action regarding changes was a separate international instrument which centered on the above-mentioned obligation of States to enact national legislation applicable to commercial space activities.

Inasmuch as the dispute settlement system laid down in the 1967 Treaty was concerned, the Special Rapporteur considered it insufficient in the present international context where commercial space activities were growing in an unprecedented scale. The need for stricter rules in this field was similarly perceived by a number of the Space Law Committee members and frequent reference was made to the Revised Text of a Convention on the Settlement of Disputes related to Space Activities adopted by the 68th Conference of the International Law Association in 1998 (see section 2 below).

[4] The Report of the Sixty-Ninth Conference of the ILA will be published shortly. The Reports of the different Committees, Working Sessions and Resolutions of the Plenary Session may be found in the ILA's website: www.ila-hq.org.

1.2 The 1972 Liability Convention

The position of the ILA Space Law Committee regarding this Convention was one of entire support to the proposal made by Austria to the Legal Subcommittee in 1998 whereby States should be encouraged to avail themselves of paragraph 3 of UNGA Resolution 2777 (XVI) and thereby accept, on a basis of reciprocity, the binding nature of the Claims Commission awards.[5]

The Special Rapporteur, Prof. Maureen Williams (University of Buenos Aires, Argentina), considered this idea as a mid-way solution which by no means outspaced the target of moving towards more effective mechanisms for dispute settlement. The Austrian proposal, she considered, does not mean a retreat on the claim for compulsory procedures but, merely, a retreat on the insistence concerning such procedures. Even though the political moment is certainly more propitious for advancement now than in 1972 when the text of the Convention was adopted, the will of the space powers still seems to be lacking.

The definition of damage contained in Article I of the Liability Convention was viewed, in general, as acceptable. However, some of the Committee members observed the shortcomings of this definition not covering, with sufficient clarity, damage caused by space debris. Yet, on this point, reference is made to the 1994 ILA International Instrument on the Protection of the Environment from Damage caused by Space Debris -on which a short comment is found below in section 3. The text of this Instrument, as may be recalled, has been presented and explained by Prof. Böckstiegel both at the Legal Subcommittee of COPUOS and the at Full Committee.

Another controversial question within the Liability Convention relates to the provisions on the applicable law (Article XII). The Special Rapporteur considered, and most of the Space Law Committee members agreed, that this Article was exclusively concerned with public international law and did not raise a problem of conflict of laws. International law and the principles of justice and equity were considered less vague and obscure than part of the doctrine sometimes contended. Briefly, this Article, which goes as far as establishing the obligation of a „restitutio in integrum", is viewed as one of the greatest achievements of the Liability Convention. In this sense, a number of references based on case law were mentioned by the Special Rapporteur.

Thus, within our Space Law the general idea on Article XII of the Liability Convention is that the provisions on applicable law, according to which compensation is to be established, should remain as they stand today.

1.3 The 1975 Registration Convention

A number of steps have been suggested by the ILA Space Law Committee to make this Convention consistent with the present times. In the first place, that national registries kept by the launching States should be unified as much as possible and that further requirements should be added to Article 4 of this Convention, such as references to the owners and operators of the space object.

[5] UNGA Resolution 2777 (XXVI) was adopted on 29 November 1971.

The Special Rapporteur on this Convention, Professor Vladimir Kopal (Czech Republic), in a practical and realistic approach to the question, underlined the need for registrations –both national and international- to help in the clear identification of the launching State or States and other entities participating in the launching as well. He favoured the idea of not changing this Convention to include these suggestions but, rather, to negotiate some kind of binding international instrument or, as a first step, a UN General Assembly Resolution based on a COPUOS (Legal Subcommittee) Draft.

The overall conclusion of this Special Rapporteur –fully shared by the ILA Space Law Committee- was that the main issues arising from commercial activities in space were only remotely related to the Registration Convention. Indeed, it is to the 1967 Space Treaty and the 1972 Liability Convention that the commercial sides of these activities are closely linked.

1.4 The 1979 Moon Agreement

Contrary to the general feeling within the ILA Space Law Committee that the above-analysed Space Treaties should be kept in their present reading and -if necessary- adjustments or changes be introduced by means of separate instruments, the Moon Agreement was seen in a different light. The low number of ratifications obtained so far clearly indicated that the international community was not prepared to go along with its provisions, particularly Article 11 stating that the Moon and its resources are the common heritage of mankind and envisaging the setting up of an international system for the management of those resources.

The reaction of our Committee to this Agreement may be summarised as „we either improve on it or replace it". The Special Rapporteur, Dr. Frans von der Dunk (Netherlands Branch) observed that neither developed nor developing countries had shown an interest in the Moon Agreement. As to improvements, consensus began to grow within the ILA Space Law Committee of drawing analogies from the Law of the Sea, particularly in connection with the controversial nature of Part XI of the 1982 Montego Bay Convention dealing with areas beyond national jurisdiction. As is known, the polemic drafting of Part XI of the Convention led to further negotiations resulting in the adoption of an Agreement on its implementation.[6]

The Special Rapporteur on this topic identified a list of provisions included in the Moon Agreement which, either directly or indirectly, were related to commercial space activities. In this respect, the frequent references to "use" and "exploitation" were mentioned, and the lack of general agreement on the scope and implications of the terms "exploration", "use" and "exploitation" was pointed out. The term "exploitation", as may be recalled, does not appear one single time in the 1967 Space Treaty.

1.5 Additional views of the ILA Space Law Committee members on the need for changes to the Space Treaties

Many members of the ILA Space Law Committee had the opportunity to meet and discuss various outstanding issues related to the amendment of the Space

[6] 1994 New York Agreement on the Implementation of Part XI of the Law of the Sea Convention.

Treaties during the Working Session of the 69th Conference of the Association (London July 2000).

It therefore seems appropriate to pause on the - sometimes - dissenting but certainly enlightening views expressed within our Committee.[7]

One of the points of criticism was Article VI of the 1967 Treaty around which members' positions ranged from mild concern (such as the view of the Special Rapporteur for this Treaty) to sharp concern for what they considered were serious gaps in that Article. Prof. Bin Cheng, for example, strongly advocated the need to revise this provision which, in its present reading, raises uncertainties. For example, if States are made directly responsible for private national activities in space it would follow that not only acts committed by States would be breaches of public international law but arguably breaches of domestic law, both civil and even perhaps criminal. To match the suggested changes, the amendment of Article VIII of the 1967 Treaty was suggested with the possible introduction of the concept of nationality for spacecraft. Similarly, the legal status of space objects landed or constructed on a celestial body was considered in need of urgent attention.[8]

In general, and having in mind the reluctant attitude of the international community towards the introduction of changes, a cautious approach to the revision of the Space Treaties was recommended. In this sense, and as stated in his Special Report on the Registration Convention, Professor Kopal observed that adjustments should be made by means of protocols or annexes. Concerning this Agreement, Prof. Kopal drew attention to the desirability of reconsidering and elaborating Article 11 which was, to date, a source of misunderstanding, as the exploitation of the natural resouces of the Moon is about to become feasible.

A further question discussed at the ILA London Conference was the obstacles standing in the way of the modification of treaties. In the case of the Space Treaties the different groups of Parties to each of them made this procedure particularly difficult, especially having in mind that, in accordance with international law, only the Parties were entitled to amend the Treaties. In practice, therefore, any such course of action appeared extremely complicated and unrealistic.

Discussion also centered around the possibility of drafting a comprehensive convention on the Law of Outer Space, following a proposal to this effect made by the Russian delegation to the Legal Subcommittee of COPUOS at its 39th Session in 2000. Prof. Kolosov, present at the London Conference, pointed out that the Principles on Direct Broadcast and Nuclear Power Sources in Outer Space could perhaps be included in this kind of Convention. The model provided by the 1982 Law of the Sea Convention was similarly mentioned within this context.

A number of our Committee members considered this proposal ran counter to the objective of increasing the number of ratifications to the existing Space Treaties. On this point the efforts made, and almost insurmountable problems encountered, in the field of air law and liability leading to the 1999 Montreal Convention replacing the Warsaw System were brought to mind at the London Conference.

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[7] See note 3.

[8] See, further, Bin Cheng, STUDIES IN INTERNATIONAL SPACE LAW, Oxford Clarendon Press 1997, especially chapters 17 and 18. Also, S.M. Williams in her review of this book, I&CLQ, Vol. 48, Part I, January 1999, pp.238-241

So far, the general conclusions drawn from the work of the ILA Space Law Committee on the need to review the Space Treaties in view of commercial space activities. At the end of the Conference the Space Law Committee was requested to

elaborate concrete proposals regarding possible amendments of, as well as possible supplements to, the United Nations space law instruments in view of commercial space activities, to be presented to the next ILA Conference in 2002.[9]

2. Dispute settlement

In connection with dispute settlement let us recall from earlier reports of the ILA to COPUOS that the ILA Revised Text on a Draft Convention on the Settlement of Disputes related to Space Activities was adopted by the ILA 68th Conference (Taipei, May 1998). Only minor adjustments were introduced to the former text adopted by the ILA in 1984 (61st Conference, Paris). Among the striking features of this Draft, mention should be made of Article 10 which leaves the door open for private entities to be parties to the dispute settlement mechanisms established by the Convention for sovereign States.

It should be equally borne in mind that the need for more effective procedures in the field of dispute settlement was a matter of concern to the Workshop on Space Law in the Twenty-first Century held within the framework of Unispace III in Vienna (July 1999) and that the ILA Draft was addressed in the various sessions of this meeting. As observed earlier, this Draft has been discussed and supported at international, regional and national fora and its provisions have been the object of profound analysis in different research projects. On this question the 69th Conference of the ILA requested its Space Law Committee

to continue its consideration of the issues related to dispute settlement regarding space activities and, in particular, of commercial space activities and of steps that may be appropriate to promote progress in this regard in view of the work of COPUOS related to this subject.[10]

3. Space Debris

Recalling earlier reports of the ILA to COPUOS, in the aftermath of the adoption of the ILA International Instrument on the Protection of the Environment from Damage Caused by Space Debris (66th Conference, Buenos Aires 1994), the subject has continued under permanent study by the ILA. This Instrument is frequently referred to at national and international meetings and one of the common denominators to be drawn therefrom is that it appears timely for this question to be included in the agenda of the Legal Subcommittee of COPUOS. It may be added that developing countries which, in many cases, are operating their own domestic satellites, have shown concern on the absence of clearer rules governing the matter.

[9] Resolution N° 13/2000 of the 69th ILA Conference, part 1.

[10] Resolution N° 13/2000 of the 69th ILA Conference, part 2.

On this topic the 69th Conference of the ILA requested our Committee

to continue its consideration of the legal aspects of space debris and of steps that may be appropriate in following up the Buenos Aires Draft Convention and in view of the work of the COPUOS related to the subject.[11]

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[11] Resolution N° 13/2000 of the 60th ILA Conference, part 3